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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/620,821	07/21/2000	Thomas J. Cloonan	4807.00009	4399

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EXAMINER

HARPER, KEVIN C

ART UNIT PAPER NUMBER

2664

DATE MAILED: 03/18/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/620,821

Applicant(s)

CLOONAN, THOMAS J.

Examiner

Kevin C. Harper

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-7, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 and 5 is/are allowed.
- 6) ☒ Claim(s) 6, 7, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Arguments

Applicant's arguments filed 7 January 2002 have been fully considered but they are not persuasive.

1. Applicant argued that Kilkki teaches only processing a packet in response to a flow rate and a buffer depth and is not concerned with priority as defined in the Specification and as described in the Remarks. Examiner agrees with Applicant that the priority of Kilkki is relative to the measured bit rate and the nominal bit rate (NBR). However, the NBR is a user negotiated rate determined by user service fees, such that a user subscribing to a higher NBR will pay more for the service (col. 5, lines 26-29 and lines 41-43). Therefore, Kilkki's definition of priority is similar to the definition of priority as described by Applicant in the Specification and in the Remarks.

2. Applicant argued that Kilkki does not teach a means to process the packet in response to a flow rate, a packet priority (as defined in the Specification), and the buffer depth. However, in Figures 1 and 4 of Kilkki describes that the packet priority (as determined by the flow rate and a user negotiated rate commensurate with user fees) and the buffer depth are used to determine whether to store a packet in memory or to discard the packet (col. 8, lines 17-27).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 6-7 and 11-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Kilkki (US 6,081,505).

3. Regarding claims 6-7, Kilkki discloses a method for providing data packet congestion control (abstract, last five lines). The method comprises the steps of determining the particular service flow associated with a data packet and the flow rate of the particular service flow (Figure 1, step 44 and Figure 2), quantizing the data packet flow rate into at least one priority level (Figure 3, step 76), detecting the instantaneous buffer circuit depth (Figure 1, step 50), and processing the packet (Figure 1, steps 52 and 54) in response to the data packet flow rate, the data packet priority, and the current buffer circuit depth. The number of priority levels, as determined by the current service flow rate, may be four (col. 12, lines 45-46).

4. Regarding claim 11, Kilkki discloses a method for adjusting the data rate of packets transiting a network (abstract, lines 12-15). The method comprises determining a maximum data rate allowed through a network (col. 13, Table 1, NBR), monitoring the data rate of the data packets (Table 1, MBR), determining a predetermined priority of a data packet (Table 1, PL), and determining a remaining memory in a memory circuit (Figure 4, steps 81 and 82; col. 15, lines 29-34). If the data packet has a low priority and the data rate is greater than the maximum data rate, then the packet is dropped (Figure 4, steps 83 and 84). If the data packet has a high

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priority and the data rate is greater than the maximum data rate, then the packet is processed (steps, 83 and 85-87).

5. Regarding claim 12, if data packets receive a priority of 0 due to the measured data rate (col. 13, lines 40-42), then the packet will always be processed (Figure 4, step 83; col. 15, lines 34-38; note: when the allowable priority level is 0, a data cell having a priority of 0 will always be processed since " $0 > 0$ " in step 83 will be evaluated as false).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Harper whose telephone number is 703-305-0139. The

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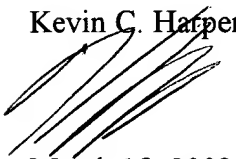
examiner can normally be reached weekdays, except Wednesday, from 8:00 AM to 6:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin, can be reached at 703-305-4366. The fax number for Technology Center (TC) 2600 is 703-872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Customer Service Office for TC 2600 at 703-306-0377.

KWANG BIN YAO
PRIMARY EXAMINER

Kevin C. Harper



March 15, 2002

